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DEPARTMENT OF STATE

ASSISTANT SECRETARY

February 3, 1959

TO : The Secretary  
THROUGH: S/S  
FROM : IO - Francis O. Wilcox

SUBJECT: IO Comments on SP's Memorandum of January 28 Regarding Berlin

In his memorandum to you of January 28, which discusses certain aspects of the Berlin problem, Mr. Gerard Smith proposes that in the event the USSR turns over control functions to the GDR our first step should be to go to the UN Security Council, jointly with the UK and France. He proposes a complaint against the USSR under Chapter VI of the Charter so that, under Article 27(3), the four occupying powers would have to abstain from voting and action would be determined by China and the non-permanent members.

As you are aware, the Security Council has never applied this provision of the Charter. The general practice is to make a complaint in sufficiently broad terms that either Chapter VI or Chapter VII could be invoked, depending upon the circumstances.

Moreover, at the time the Berlin question came to the Council in 1948, the four occupying powers did participate fully. They all voted on the only substantive resolution submitted so that the possible application of Article 27(3) did not arise. The USSR refused at first to participate in the discussion on the ground that the matter was placed beyond the Council's competence by Article 107 of the Charter. (relating to action regarding enemy states). Later the USSR vetoed a draft resolution developed by the Council's non-permanent members calling for removal of the blockade and negotiations on the currency problem.

This record, in my judgment, shows that we would face serious obstacles if we were to proceed in the Security Council on the assumption that the four occupying powers would be compelled to abstain.

Moreover, I doubt the political wisdom of going into the Council on a basis which would deny the United States the protection of its vote in the Council.

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